161 App. Div. (N. Y.) 875, 146 N. Y. Supp. 996; *First National Bank* v. *Clark*, 59 Colo. 455, 149 Pac. 612; *Bidcock* v. *Bishop*, 3 Barn. & Cr. 605. See *Warren* v. *Branch*, 15 W. Va. 21. The mere non-disclosure is sufficient; the creditor need not have a fraudulent motive. *Railton* v. *Matthews*, 10 Cl. & Fin. 934; *Sooy* v. *State*, 39 N. J. L. 135; *Damon* v. *Empire State Surety Co.*, *supra*. This defense is generally founded on fraud. *Bellevue Bldg. & Loan Ass'n* v. *Jeckel*, 104 Ky. 159, 46 S. W. 482; *Lee* v. *Jones*, 17 C. B. (N. S.) 482; *Damon* v. *Empire State Surety Co.*, *supra*; *Sooy* v. *State*, *supra*. See 1 STORY, EQUITY JURISPRUDENCE, 14 ed., § 305. It is submitted, however, that the defense should be variation of risk which is based on equitable grounds. See 16 HARV. L. REV. 511. Thus, if the creditor has knowledge of facts which increase the surety's risk and also knows or has reasonable cause to believe that the surety is unaware thereof, then a duty to disclose should be imposed on the creditor. In the principal case, the agreement accelerating maturity imposed a heavier burden on the principal which, since it might interfere with the enforcement of the surety's rights, was a variation of the surety's risk. The defendant meant to guard against this by refusing to sign one note for the full amount, and as the creditor had notice, he was under a duty to disclose.

PROFITS À PRENDRE — WHAT CONSTITUTES AN ABANDONMENT. — The owner of a farm conveyed part thereof, a slate quarry, to the predecessor of the plaintiff, reserving for himself, his heirs, and assigns the privilege of removing all waste slate resulting from the operation of the quarry. Thereafter, the owner conveyed the remainder to the defendant's predecessor, but reserved no right of way, thereby leaving himself without means of access to the quarry. For thirty-three years neither the grantor nor his heirs exercised the right to remove the slate, after which period the heirs granted all rights under the reservation to the defendant. The plaintiff seeks to restrain the defendant from entering his premises to remove the slate. *Held*, that the injunction be granted. *Mathews Slate Co.* v. *Advance Ind. Supply Co.*, 172 N. Y. Supp. 830.

Mere nonuser, however long continued, cannot operate as an abandonment of an easement created by grant. *Arnold* v. *Stevens*, 24 Pick. (Mass.) 106; *Welsh* v. *Taylor*, 134 N. Y. 450, 33 N. E. 896; WASHBURN, EASEMENTS, 4 ed., 717. But it has been held that where the easement has been acquired by prescription, nonuser without more for the statutory period will extinguish the right. *Browne* v. *Baltimore M. E. Church*, 37 Md. 108. See also *Sayles* v. *Hastings*, 22 N. Y. 217, 224. *Jewett* v. *Jewett*, 16 Barb. (N. Y.) 150, 157. And this distinction has been adopted by statute. CAL. CIV. CODE, § 811; OKLA. REV. LAWS, 1910, § 6633. The distinction seems unsound, since prescription is based upon the presumption of a grant, and it has been disregarded in many cases. See *Ward* v. *Ward*, 7 Exch. 838; *Veghte* v. *Raritan Water Power Co.*, 19 N. J. Eq. 142, 156. But where nonuser is accompanied by adverse possession for the statutory period, it is clear that in both cases the right is barred. *Horner* v. *Stilwell*, 35 N. J. L. 307; *Woodruff* v. *Paddock*, 130 N. Y. 618, 29 N. E. 1021; *McKinney* v. *Lanning*, 139 Ind. 170, 38 N. E. 601. Also, where nonuser is coupled with some act showing clearly the intent to abandon the easement, it will be extinguished. *Snell* v. *Levitt*, 110 N. Y. 595, 18 N. E. 370; *Vogler* v. *Geiss*, 51 Md. 407; *Pope* v. *Devereux*, 5 Gray (Mass.) 409. The duration of the nonuser, however, is only important in that it tends to strengthen the presumption of an abandonment. *Queen* v. *Chorley*. 12 Q. B. 515; *Canning* v. *Andrews*, 123 Mass. 155. In the principal case the nonuser extended through a period of thirty-three years, and the grantor by alienating the farm without reserving for himself means of access to the quarry, showed clearly an intent to abandon the right. Though a profit and not an easement was involved, it made no difference in the application of the above principles and the court correctly held that the profit had been abandoned.